

Cite as: *Size Appeal of Maywood Closure Co., LLC & TPMC-EnergySolutions Environmental Services 2009, LLC*, SBA No. SIZ-5499 (2013)

**United States Small Business Administration  
Office of Hearings and Appeals**

SIZE APPEAL OF:

Maywood Closure Co., LLC & TPMC-  
EnergySolutions Environmental Services  
2009, LLC,

Appellant,

RE: Cabrera Services, Inc.

Appealed From Size Determination Nos.  
1-2013-37, 1-2013-38

Solicitation No. W912DQ-12-R-3004

SBA No. SIZ-5499

Decided: September 13, 2013

APPEARANCES

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## DECISION<sup>1</sup>

### I. Introduction and Jurisdiction

This is a consolidated protestors' appeal from June 13, 2013 size determinations concluding that Cabrera Services, Inc. (Cabrera) is an eligible small business. On appeal, I affirm the size determinations and deny the appeals.

SBA's Office of Hearings and Appeals (OHA) decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134.

### II. Issue

Whether the size determinations were based on clear error of fact or law. *See* 13 C.F.R. § 134.314.

### III. Background

#### A. Solicitation and Protests

On March 22, 2012, the U.S. Department of the Army, U.S. Army Corps of Engineers (USACE), Kansas City District, issued Solicitation No. W912DQ-12-R-3004, for Environmental Remediation Services in support of continued remediation activities at the Formerly Utilized Sites Remedial Action Program (FUSRAP) Maywood Superfund Site in Maywood, New Jersey. The Contracting Officer (CO) issued the solicitation as a single award task order and total small businesses set-aside contract. The CO designated North American Industry Classification System (NAICS) code 562910, Environmental Remediation Services, with a corresponding size standard of 500 employees.

Offers were due on June 7, 2012. On May 8, 2013, the CO issued a notice identifying Cabrera as the apparent successful offeror. On May 14, 2013, Maywood Closure Company, LLC (MCC) and TPMC-EnergySolutions Environmental Services 2009, LLC (TPMC) each filed timely size protests challenging Cabrera's status as a small business based on alleged affiliation with The Shaw Group, Inc. (Shaw). The protests raised concerns of affiliation between Cabrera and Shaw under the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4), based on the "present effect" rule, 13 C.F.R. § 121.103(d)(1), and under the totality of the circumstances, 13 C.F.R. § 121.103(a)(5). On May 16, 2013, the CO forwarded the protests to the U.S. Small Business Administration (SBA) Office of Government Contracting, Area I (Area Office) for a size determination.

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<sup>1</sup> This decision was originally issued on September 16, 2013. Pursuant to 13 C.F.R. § 134.205, I afforded the parties an opportunity to request redactions. OHA received a timely request for redactions and considered that request in issuing this redacted version of the decision for public release.

### B. Size Determination Nos. 1-2013-37 & 1-2013-38

On June 13, 2013, the Area Office issued Size Determination Nos. 1-2013-37 & 1-2013-38 (size determinations) concluding that Cabrera is a small business.

The Area Office requested information and documentation and determined that Cabrera's current number of employees is below the size standard. The Area Office then investigated affiliation based on joint ventures, 13 C.F.R. § 121.103(h). The Area Office noted that Cabrera is a party to a joint venture with Insight Environmental, Engineering, and Construction, Inc., which resulted in one contract in 2009, and is a party to a joint venture with Ordnance and Explosives Remediation, Inc., which resulted in a contract in 2008. Based on the fact neither joint venture exceeded more than three contracts in a two year period, the Area Office did not find affiliation based on joint ventures.

The Area Office then examined affiliation under the ostensible subcontractor rule, 13 C.F.R. § 121.103(h)(4). The Area Office provided an in depth summary of the ostensible subcontractor analysis in *Size Appeal of Spiral Solutions and Technologies, Inc.*, SBA No. SIZ-5279 (2011), and *Size Appeal of InGenesis, Inc.*, SBA No. SIZ-5279 (2013). In accordance with the rule and the cases, the Area Office determined that Cabrera was not in violation of the ostensible subcontractor rule.

The Area Office stated Cabrera will be performing the primary and vital requirements of the contract, remediation of the FUSRAP Maywood Superfund Site. The Area Office stated Cabrera is a well-established corporation. According to its proposal, "Cabrera has completed 685 radiological projects, including 47 at 16 FUSRAP sites." Size Determination at 7. Cabrera's past performance submissions include six relevant past performance submissions and Cabrera highlighted its experience as a prime contractor for remediation services. The Area Office noted Cabrera derived the vast majority of its sales from NAICS Code 562910, Remediation Services, in the most recent completed fiscal year and that is the same code assigned to the solicitation.

Additionally, the Area Office found Cabrera serves as the overall manager of this contract, overseeing all technical and quality control aspects. The Area Office noted Cabrera employees will serve as program manager and project manager. The Area Office stated Cabrera is the primary point of contact and will fill key management positions. The Area Office indicated Cabrera did not rely on Shaw to prepare or submit the proposal, there is no financial assistance under the teaming agreement, and Cabrera receives [XX]% of the earned fee of total revenue.

Next, the Area Office investigated affiliation under the present effect rule, 13 C.F.R. § 121.103(d)(1). Under the present effect rule SBA may treat an agreement to merge to have a present effect on the power to control a concern. The Area Office indicated there was no evidence of an agreement or letter of intent to merge and, accordingly, no affiliation based on the present effect rule.

Finally, the Area Office considered the totality of the circumstances, 13 C.F.R. § 121.103(a)(5). Under the totality of the circumstances, SBA may find affiliation even though no

single factor is sufficient to demonstrate affiliation. The Area Office determined Cabrera will perform the primary and vital requirements of the contract and will not be unduly reliant on Shaw. The Area Office stated no other factors of affiliation were discovered and, thus, there is no affiliation under the totality of the circumstances.

#### C. MCC Appeal Petition

On June 28, 2013, MCC appealed the size determination to OHA and alleged multiple errors. First, MCC argues the Area Office failed to consider evidence of affiliation MCC presented at the protest level demonstrating Cabrera is managed by a former key employee of Shaw and that the companies have a contractual relationship spanning twelve years. MCC states, although the Area Office confirmed that Cabrera's Chief Executive Officer (CEO) is a former key employee of Shaw, the Area Office did not consider whether it was indicative of affiliation. Additionally, MCC asserts the Area Office failed to investigate MCC's allegation that the CEO has implemented Shaw's risk management systems companywide. MCC states the error was compounded by a conclusory analysis of the totality of the circumstances. MCC alleges the Area Office failed to consider whether the profit-sharing arrangement between Cabrera and Shaw is indicative of affiliation under the ostensible subcontractor rule. Moreover, MCC asserts the Area Office did not properly apply OHA case law regarding the ostensible subcontractor rule. Finally, MCC argues the Area Office's evaluation of the primary and vital requirements of the contract was flawed. MCC states the Area Office erred in reviewing whether Cabrera was capable of performing the primary and vital portions of the contract, when the Area Office should have looked to determine if Cabrera would actually perform those portions of work under the contract.

#### D. TPMC Appeal Petition

On July 1, 2013, TPMC also filed an appeal of the size determination. On July 2, 2013, TPMC's appeal was consolidated with MCC's appeal. TPMC argues the Area Office erred in failing to consider Shaw's incumbent status or Shaw's role performing the primary and vital requirements of the contract. Additionally, TPMC asserts the Area Office did not fully investigate all protest allegations. TPMC argues the Area Office did not address substantive arguments that Shaw prepared the teaming agreement, that Cabrera was reliant on Shaw for management processes and procedures, or that the magnitude of the contract suggests reliance. TPMC asserts all factors make it likely Cabrera and Shaw are affiliated under the ostensible subcontractor rule.

#### E. MCC Supplement to Appeal

On July 17, 2013, MCC filed a supplement to its appeal after reviewing the record. MCC argues the record supports its allegations. MCC argues, based on the teaming agreement, Shaw would perform the primary and vital remediation work, while Cabrera's responsibilities would primarily be administrative and managerial duties. MCC asserts the Area Office erred in equating managing the contract with performing the primary and vital components. MCC states the teaming agreement demonstrates that Shaw will perform the remediation work. Additionally, MCC cites concerns with inaccuracies in Cabrera's SBA Form 355. MCC asserts the Area Office

failed to investigate factual inaccuracies between Cabrera's responses on the SBA Form 355 and the record.

#### F. Cabrera's Response to the Appeals

On July 17, 2013, Cabrera responded to the appeals and asserted MCC and TPMC failed to establish clear error of fact or law in the Area Office's size determination.

Cabrera states the Area Office did not err in finding Cabrera will provide ten of the sixteen key personnel. In addressing MCC's and TPMC's concerns that a former Shaw employee is Cabrera's CEO, Cabrera notes the Area Office was aware: the CEO is a former Shaw employee; was not involved in preparing Cabrera's bid; that it is the program manager and project manager who have overall authority; and the program manager and project manager report to the president, not the CEO. Cabrera argues the Area Office reviewed the teaming agreement, which indicates Cabrera will be fully responsible and accountable for the overall management of the project and will not guarantee to subcontract any specific percentage of revenue or labor to Shaw. Cabrera recites that profit sharing is not dispositive of a joint venture and asserts the Area Office properly considered all aspects of the relationship to find no affiliation.

#### G. TPMC's Supplement to the Appeal

On July 17, 2013, TPMC filed a supplement to its appeal after reviewing the record. TPMC asserts the record demonstrates Shaw will perform the primary and vital requirements of the contract. TPMC argues the teaming agreement limits Cabrera's role to project management and oversight where Shaw is responsible the primary and vital soil/subsurface remediation and groundwater remediation. TPMC recognizes given the "IDIQ-nature of the Contract, it is difficult to determine whether the primary and vital requirements being performed by Shaw constitute the 'bulk of the effort.' " TMPC Supplement at 4-5. TPMC also argues Cabrera's SBA Form 355 is incomplete and inaccurate and failed to include information about Shaw. TPMC argues the errors warrant reversal of the size determination.

#### F. Motion to Reply after the Close of Record

On July 19, 2013, Cabrera filed a motion to reply to MCC's and TPMC's supplement to the appeal. Cabrera argues for an opportunity to rebut MCC's and TPMC's allegations regarding the veracity of Cabrera's submissions to the Area Office. Cabrera represented that Maywood did not object to Cabrera's motion and TPMC did oppose the Cabrera's motion.

Cabrera argues MCC and TPMC wrongly accuse Cabrera of misrepresenting facts or withholding relevant information. Cabrera asserts the size determination is based on the record as a whole and MCC's and TPMC's allegations that Cabrera was somehow hiding information based on responses to SBA Form 355 are unfounded. Cabrera cites its response and affidavits to demonstrate that it was fully responsive to SBA's inquiry. Cabrera argues the Area Office fully investigated and received all the information necessary to make a sound determination on

Cabrera's size. Cabrera notes, in accordance with 13 C.F.R. § 121.1009(e), the Area Office makes its size determination not only on SBA Form 355, but based on the entire record.

#### IV. Discussion

##### A. Timeliness

Appellant filed its appeal within 15 days of receiving the size determination. Thus, the appeal is timely. 13 C.F.R. § 134.304(a)(1).

##### B. Standard of Review

The standard of review for this appeal is whether the Area Office based its size determination upon clear error of fact or law. 13 C.F.R. § 134.314. In evaluating whether there is a clear error of fact or law, OHA does not consider Appellant's size *de novo*. Rather, OHA reviews the record to determine whether the Area Office based its size determination upon a clear error of fact or law. See *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775 (2006), for a full discussion of the clear error standard of review. Consequently, I will disturb the Area Office's size determination only if I have a definite and firm conviction the Area Office made key findings of law or fact that are mistaken.

##### C. The Merits

###### 1. Motions

MCC and TPMC moved for access to the Area Office case file. On June 28, 2013, I issued a protective order in the case and, on July 3, 2013, I admitted counsel for MCC and TPMC under the protective order which permitted access to the Area Office case file.

On July 17, 2013, MCC and TPMC each independently filed requests to supplement the record after a review of the Area Office file. MCC's and TPMC's request to supplement their appeal petitions is hereby GRANTED. MCC and TPMC explained the supplemental pleadings were necessary to address information in the Area Office file which was inaccessible to the parties until counsel was admitted under the protective order on July 3, 2013. MCC's and TPMC's requests demonstrate good cause, were filed in advance of the record closing, and do not create unreasonable delay in the determination of the case.

On July 19, 2013, Cabrera filed a motion to reply to MCC's and TPMC's supplemental pleadings. In accordance with 13 C.F.R. § under 134.309(d), the rules of practice for appeals from size determinations prohibit a reply unless directed by the judge. Here, Cabrera's filing is better characterized as a supplemental response to MCC's and TPMC's supplemental grounds for appeal. A response to an appeal is allowed under 13 C.F.R. § 134.309(a). Cabrera's supplemental response was filed two days after the close of record, but it was impossible for Cabrera to compile and file a meaningful response until MCC and TPMC filed their supplements on July 17, 2013, the date the record closed. Accordingly, I hereby extend the close of record to July 19,

2013 and GRANT Cabrera's supplemental response to address the new allegations raised in MCC's and TPMC's supplemental appeals.

## 2. Analysis

Cabrera is a small business without any affiliates. However, MCC and TPMC argue Cabrera should be considered affiliated with Shaw. If Cabrera and Shaw are affiliated, Cabrera is not a small business.

The heart of any ostensible subcontractor case is which concern is managing the contract, and which concern is performing the primary and vital requirements of the contract. Under the ostensible subcontractor rule, a prime contractor and its subcontractor may be treated as affiliates if the subcontractor performs the primary and vital requirements of the contract, or if the prime contractor is unusually reliant upon the subcontractor. 13 C.F.R. § 121.103(h)(4).

To apply the ostensible subcontractor rule, the Area Office must consider all aspects of the relationship between the prime and subcontractor, including the terms of the proposal, agreements between the firms (such as the teaming agreement, bonding, or financial assistance), and whether the subcontractor is the incumbent on the predecessor contract. *Id.*, *Size Appeal of C&C Int'l Computers and Consultants Inc.*, SBA No. SIZ-5082 (2009); *Size Appeal of Microwave Monolithics, Inc.*, SBA No. SIZ-4820, at 7 (2006). Ostensible subcontractor inquiries are “intensely fact-specific given that they are based upon the specific solicitation and specific proposal at issue.” *Size Appeals of CWU, Inc., et al.*, SBA No. SIZ-5118, at 12 (2010).

OHA has explained that the “primary and vital” contract requirements are those associated with the principal purpose of the acquisition. *Size Appeal of Santa Fe Protective Servs., Inc.*, SBA No. SIZ-5312, at 10 (2012); *Size Appeal of Onopa Mgm't Corp.*, SBA No. SIZ-5302, at 17 (2011). In this case, the Single Award Task Order Contract, Indefinite Delivery Contract is for remediation of the FUSRAP site at Maywood. The contractor is expected to furnish labor, materials, and equipment to complete task orders. Solicitation at ¶ 1.3. The contractor is expected to provide a wide range of services related to hazardous waste sites, including: establish, maintain, and follow a safety and health program; establish and follow chemistry data quality procedures; traditional and innovative methods for site remediation; topographical and geophysical surveys; contaminated soil excavation and debris removal; construction of short-term project facilities; radioactive material remediation; residential property remediation; site restoration; demolition; public relations including community education or public affairs activities; management of an on-site laboratory; reporting and document preparation; maintenance of electronic files, data, maps, tables, databases, and project administrative files; and groundwater remediation. *Id.* at ¶ 1.4.

The solicitation identifies 16 key positions. These are Program Manager, Project Manager, Site Safety & Health Officer, Contractor QC System Manager, Safety & Health Manager, Certified Health Physicist, Regulatory Specialist, Radiation Safety Officer, Cost Scheduler, and Contracts Manager, Civil Engineer, Hydrologist, Site Geologist, Project Chemist, Site Superintendent, and Public Relations Specialist. Solicitation, ¶ 3.10, pp. 32-38. Cabrera proposes its own personnel for the first ten positions, and Shaw's for the second six. Proposal,

Vol. II, at 2-18. The Evaluation Factors call for evaluating an offerors' Technical Capabilities, Technical Staff Experience (considering Personnel Experience, Organizational Approach, Safety and Health Plan and Chemical Quality Management), Past Performance and cost. Solicitation at 167-174. Under Technical Staff Experience, Personnel is rated as most important, followed by Management Plan, Safety and Health, with Chemical Quality Management last. Solicitation at 175.

Based on the record before it and a review of OHA case law, the Area Office determined Cabrera will perform the primary and vital requirements of the contract. In addition to considering that remediation services is where Cabrera derived the majority of its sales in the prior fiscal year, Cabrera's experience in completing 685 radiological projects, and Cabrera's past performance submissions highlighting its experience as a prime contractor, the Area Office reviewed the teaming agreement, proposal, and solicitation and found Cabrera will manage the contract and will oversee all technical work and quality control. Under the teaming agreement, Cabrera serves as the government point of contract, Cabrera fills key management positions, and the project manager will become a Cabrera employee subordinate to Cabrera management. Cabrera demonstrated it is not unduly reliant on Shaw and will manage the contract and perform the primary and vital requirements of the contract.

Cabrera will provide ten of the key employees. As far as the evaluation factors go, the experience of Cabrera's ten employees would be given no less weight than Shaw's six, as Cabrera's own extensive past performance would be considered with Shaw's. Further, Cabrera's Management and Health and Safety responsibilities ranked higher in importance for evaluation than the Chemical Quality Management tasks Shaw's employees would perform. Clearly, Cabrera was not unusually reliant upon Shaw for the evaluation or for the performance of the primary and vital tasks.

The Area Office's determination is not flawed because Cabrera's CEO is a former Shaw employee. The CEO was hired three months after Cabrera had prepared and submitted its proposal and is not key personnel for the project. The proposal demonstrates that the program manager and project manager will have overall authority. Similarly, MCC's concerns about the longevity of Shaw's ties to Cabrera do not impair Cabrera's ability to manage and perform the contract. Enduring business relationships, which can be critical to a concern's success, are not sufficient to deem businesses affiliated; rather, it is whether those long-term ties create undue reliance and influence amounting to control. Cabrera submitted a table demonstrating that Cabrera had not performed work for Shaw in the previous three fiscal years and that the work performed for Shaw in 2008 was less than 2% of Cabrera's annual receipts. Cabrera's Response to Protest at Ex. 9. This establishes that there was no continuing contractual relationship between Cabrera and Shaw which could rise to the level of affiliation.

It is true that OHA has recognized that when a prime contractor chooses to employ key personnel from a subcontractor, "rather than proposing to use its own employees or to hire new employees for the positions," this could be suggestive of unusual reliance. *Size Appeal of Alutiiq Educ. and Training, LLC*, SBA No. SIZ-5192, at 11 (2011). However, in this case the teaming agreement is clear that these employees will report to Cabrera's program manager and project manager; thus, ultimate control and decision-making resides with Cabrera. *See Size Appeal of*



*National Sourcing, Inc.*, SBA No. SIZ-5305 (2011) (finding no unusual reliance when subcontractor would supply mid-level managers who were subordinate to the prime contractor). Although the individual proposed to be the project manager is a Shaw employee, upon contract award he would become an employee of Cabrera. Shaw would have no role in managing the contract. Moreover, the proposal identifies 10 of the 16 key employees will be Cabrera personnel, most of whom are long-term Cabrera employees. Proposal Vol. 2, Technical Staff Experience at 2-18, including Figure 2-2. It is thus clear that most of the key employees are Cabrera personnel, and that Cabrera will be managing the contract and providing most of the staff. The Area Office did not err in finding that overall management and staffing of the contract will rest firmly with Cabrera.

MCC and TPMC also questioned the Area Office's review of Cabrera's capabilities to perform the contract and profit-sharing with Shaw. "[T]he determination of what capabilities are necessary to perform a contract, or whether the awardee has such capabilities, are matters of contractor responsibility," and thus are the province of the CO, not the Area Office. *Spiral*, SBA No. SIZ-5279 at 23. Although a profit-sharing arrangement may be suggestive of a joint venture, a profit-sharing arrangement does not automatically create affiliation based under the ostensible subcontractor rule, but is only "one aspect of the totality of the circumstances" that should be considered. *Size Appeal of Infotech Enterprises, Inc.*, SBA No. SIZ-4346, at 15 (1999). The Area Office did include a review of the profit sharing and found it was not indicative of affiliation. Cabrera demonstrated it is an established business with relevant experience in remediation services. Cabrera's arrangement to receive a guaranteed [XX]% of the earned fee total revenue while Shaw receives [XX]% under the teaming agreement is not indicative of control.

The ostensible subcontractor rule "asks, in essence, whether a large subcontractor is performing or managing the contract in lieu of a small business [prime] contractor." *Colamette Construction*, SBA No. SIZ-5151, at 7. Here, the record does not support the conclusion that Shaw is performing or managing the instant contract. Pursuant to Cabrera's proposal and the teaming agreement, Cabrera will perform the "primary and vital" requirements of the contract and manage the contract, retaining control over decision making. Shaw will have a limited and defined role providing: engineering, soil/subsurface remediation, groundwater remediation, and providing a construction manager, project environmental engineer, and community relations specialists. Teaming Agreement at 11-12. There is no indication that Shaw could exert undue influence on Cabrera.

MCC's complains the Area Office erred in relying only on two decisions and did not address the decisions cited by MCC in its protest. MCC does not make a persuasive argument how the Area Office's review of limited case law amounts to error. As previously discussed ostensible subcontractor inquiries are fact-specific based upon the solicitation and proposal presented. *CWU*, SBA No. SIZ-5118, at 12. Further, *Spiral* and *In Genesis* are recent and thorough discussions of the ostensible subcontractor rule, and the Area Office properly relied upon them.

Similarly, TPMC asserts the Area Office did not fully investigate TPMC's protest arguments that Shaw prepared the teaming agreement, that Cabrera was reliant on Shaw for management processes and procedures, or that the magnitude of the contract suggests reliance.

With regard to the teaming agreement, businesses are not prohibited from adapting previously used teaming agreement templates; the concern should be if the agreement itself creates undue reliance on the subcontractor. Undue reliance is not the case in this agreement. The record does not support TPMC's allegations that Cabrera was reliant on Shaw for management and procedures. Additionally, Cabrera proved to the Area Office that it is an established, experienced company which had performed similar work.

MCC and TPMC also raised concerns about Shaw's status as the incumbent contractor, and Cabrera's plan to rely on current, or former, Shaw employees to manage the contract. The regulation does list incumbency as one of the factors to consider in an ostensible subcontractor analysis. 13 C.F.R. § 121.103(h)(4). Nevertheless, while these issues are relevant in an ostensible subcontractor analysis, neither is sufficient grounds to find a violation of the rule. OHA has repeatedly explained that engaging the incumbent as a subcontractor leads to heightened scrutiny of the arrangement, but is not a *per se* violation. *E.g.*, *HX5*, SBA No. SIZ-5331, at 11. Incumbency alone cannot establish unusual reliance. The fact that Shaw is an incumbent does not diminish Cabrera's ability to perform the contract, and does not change that fact that Cabrera will be managing the contract and performing most of the work. Based upon all of this information, the record supports the Area Office's conclusion that Cabrera is not unusually reliant upon Shaw.

Similarly, the use of six current Shaw employees (Civil Engineer, Hydrologist, Site Geologist, Project Chemist, Site Superintendent, and Public Relations Specialist) as key personnel does not create unusual reliance. Cabrera employees will fill ten other key positions, including Program Manager, Project Manager, Site Safety & Health Officer, Contractor QC System Manager, Safety & Health Manager, Certified Health Physicist, Regulatory Specialist, Radiation Safety Officer, Cost Scheduler, and Contracts Manager. OHA has recognized that when a prime contractor proposes subcontractor employees as key personnel, but those subcontractor employees are clearly subordinate to the prime contractor's own employees, there is no violation of the ostensible subcontractor rule. *National Sourcing*, SBA No. SIZ-5305, at 11 (concluding that the prime contractor would retain control of the contract, although the subcontractor would provide various subordinate managers). Cabrera also proposed that the Program Manager would leave his employment with Shaw and become Cabrera's own employee. In this regard, OHA has held that, when a prime contractor chooses to employ key personnel from a subcontractor, "rather than proposing to use its own employees or to hire new employees for the positions," this may be suggestive of unusual reliance. *Size Appeal of Alutiiq Educ. and Training, LLC*, SBA No. SIZ-5192, at 11 (2011). Such a practice does not necessarily establish unusual reliance, however, particularly when the managerial personnel remain under the supervision and control of the prime contractor. *Size Appeal of J.W. Mills Management, LLC*, SBA No. SIZ-5416, at 8 (2012). Here, although the Program Manager was employed by Shaw on the predecessor contract, he would become Cabrera's own employee upon contract award, and report to Cabrera's president. Cabrera's plan to hire the Program Manager from Shaw does not undermine Cabrera's control of the contract, or suggest any particular reliance upon Shaw.

Finally, MCC and TPMC raise inaccuracies in the SBA Form 355. While there appear to be some minor inconsistencies or misstatements, Appellants fail to demonstrate how the SBA Form 355 leads to legal or factual errors in the size determination. None of these errors by

Cabrera would lead to a finding of unusual reliance upon Shaw, nor do they point to affiliation with any other firm, or point to Cabrera's size as being in excess of the size standard. They are therefore not material errors. Although accuracy in completing SBA documentation is critical for the Area Office to conduct a meaningful size determination, there is no evidence that these misstatements lead to factual errors in the size determination. Cabrera supported the form with a lengthy response and documentation.

V. Conclusion

MCC and TPMC have not demonstrated that the size determinations are clearly erroneous. Accordingly, the appeal is DENIED, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge